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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MOUNIR H. BOUTROS,

Defendant and Appellant.

B271082

(Los Angeles County
Super. Ct. No.
MA065745)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Mounir H. Boutros was charged in count 1 with threatening a public officer, in violation of Penal Code section 71.¹ During jury trial, the information was amended to add count 2, charging the making of a criminal threat, in violation of section 422. While the jury was in deliberations, the parties agreed to a case settlement. Defendant entered a plea of no contest to count 1. The trial court, in accordance with the plea agreement, suspended imposition of sentence and placed defendant on probation for a period of three years, with conditions including 45 days of community labor and completion of an anger management program.

Defendant was granted permission to file a late notice of appeal. This court appointed counsel to represent defendant on appeal. On September 6, 2016, appointed counsel filed a brief raising no issues, asking this court to independently review the record for arguable appellate contentions under *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised of his right to file a supplemental brief within 30 days.

On October 6, 2016, defendant filed a supplemental brief. The supplemental brief mentions two legal issues, although the points made are unclear. In the first legal issue, defendant refers to the exclusionary rule and the doctrine of fruit of the poisonous tree, citing *Silverthorne Lumber Co. v. United States* (1920) 251 U.S. 385. Because

¹ Statutory references are to the Penal Code unless otherwise stated.

defendant makes no reference to a motion to suppress evidence under section 1538.5 having been made, nor does he explain what evidence should have been suppressed, we consider the issue forfeited.

The second issue raised by defendant is that the prosecution's failure to call a particular witness at trial constitutes a failure to disclose all material evidence as required by *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*). Defendant asserts, without citation to the record, that "Jacquelinee Cardenas" was identified as a witness but never called to testify. Defendant argues that the failure of the prosecution to call Cardenas as a witness resulted in the suppression of material evidence favorable to defendant. We reject the argument for a variety of reasons. First, our review of the record reveals no mention of Cardenas and no indication that she possessed evidence favorable to defendant. Second, if Cardenas was a favorable witness, the prosecution had no obligation to call her as a witness, and she could have been called by the defense. Third, because the witness was known, at least according to defendant, the claim does not implicate a suppression of evidence in violation of *Brady*, but instead it is directed to the issue of guilt or innocence, which does not survive a no contest plea. "Issues concerning the defendant's guilt or innocence are not cognizable on appeal from a guilty plea. [Citations.]" (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.)

We have completed our independent review of the record and find no arguable appellate contentions.

Defendant was fully advised of his constitutional rights and the consequences of his no contest plea. Defendant stated he understood the plea agreement and wished to plead no contest. The probationary term imposed was consistent with the case settlement.

The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, J.

We concur:

TURNER, P.J.

BAKER, J.